

Agency 48

**Department of Labor—
Employment Security Board of Review**

Editor's Note:

The Kansas Department of Human Resources was renamed the Kansas Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

Editor's Note:

Formerly referred to as Board of Review—Labor.

Articles

- 48-1. APPELLATE PROCEDURE.
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Article 1.—APPELLATE PROCEDURE

48-1-1. Filing of appeal. A party appealing from a decision of an examiner or referee shall file with any representative of the division of employment a written notice of appeal stating the reasons for said appeal. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-1-2. Notice of hearing. Upon the scheduling of a hearing on an appeal, notice of hearing on a form approved by the board of review and entitled notice of hearing, shall be mailed to the claimant and other interested parties, at least five (5) days before the date of hearing, specifying the time and place of such hearing. (Authorized by K.S.A. 1970 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971.)

48-1-3. Disqualification of referees. No referee shall participate in the hearing of an appeal in which he or she has an interest. Challenges to the interest of any referee shall be made to the referee on, or prior to, the date set for the hearing unless good cause is shown for later challenges. Such challenges to the interest of a referee shall be heard and decided immediately by the referee or, in his or her discretion, referred to the board of review. In the event the challenge is not heard

immediately, or is referred to the board of review, the hearing of the appeal shall be continued until the disposal of such challenges. The referee shall cause all parties to be notified of the new date set for such hearing by mailing a notice to all parties to the appeal at least five (5) days before the date set for the hearing. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended May 1, 1980.)

48-1-4. Conduct of hearing. (a) Each hearing shall be conducted informally and in such a manner as to ascertain all of the facts and the full rights of the parties. The claimant and any other party to an appeal before a referee shall present pertinent evidence regarding the issues involved. The referee shall receive evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. The referee, when any evidence is unnecessarily cumulative in effect or when evidence neither proves nor disproves relevant facts in issue, shall, on objection of appellant, claimant, or interested party, or on that individual's own motion, exclude or prohibit any of this evidence from being received.

(b) When a party appears in person, the referee shall examine the party and the party's witnesses, if any, to the extent necessary. During the

hearing of any appeal, the referee shall, with or without notice to either of the parties, take any additional evidence deemed necessary to determine the issues involved.

(c) Stipulations. The parties to an appeal, with the consent of the referee, may stipulate in writing or under oath at the hearing as to the facts involved.

(d) Recording of hearing. The referee shall record the hearing by use of a mechanical recording device. The recording shall constitute the official record. Other mechanical recording devices shall not be allowed in the hearing.

(e) Hearings.

(1) Hearings may be conducted in person or by telephone, subject to the following conditions.

(A) The hearing shall be conducted by telephone if none of the parties requests an in-person hearing.

(B) If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone.

(C) If all the parties involved request an in-person hearing before the date of a scheduled telephone hearing, the matter shall be continued and set for an in-person hearing; the reasons for the request shall be set forth in writing and sent to the office of appeals by fax, followed with the original sent by mail.

(D) The party requesting the in-person hearing shall be deemed to have agreed that the hearing will be scheduled at a time and geographic location to be determined by the office of appeals, and shall be deemed to have agreed to a delay of the hearing to accommodate scheduling of the hearing.

(E) An in-person hearing shall be held if deemed necessary by the secretary of human resources or the secretary's designee for the fair disposition of the appeal.

(2) A hearing scheduled in person or by telephone shall meet these requirements:

(A) permit confrontation and cross-examination of the parties and witnesses; and

(B) permit the simultaneous participation of all parties.

(3) A duly authorized representative shall not appear by telephone at a geographic location different from that of the party represented, except when appearing only as a witness.

(4) Documentary evidence shall be submitted

in advance of the hearing by mail or faxing it to the referee and opposing party. However, the referee shall allow the submission of documentary evidence at the hearing or after the hearing, if to do so is necessary for the fair disposition of the appeal. (Authorized by and implementing K.S.A. 1996 Supp. 44-709(g), as amended by L. 1997, Ch. 19, § 1; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987; amended May 22, 1998.)

48-1-5. Continuance of hearings. The referee may continue any hearing upon his or her own motion or upon written application of any party to the appeal. (a) *Failure to appear.* If the appellant or any other party fails to appear at the first hearing, the referee shall make a decision based on the record at hand. If the nonappearing party within twelve (12) days following the mailing of the decision petitions the referee for a hearing and shows good cause for the nonappearance, the referee shall set aside the decision and proceed to reschedule the matter for hearing.

(b) *Notice of continuance.* The referee shall cause notices to be mailed to all interested parties to the appeal wherever there is a continuance.

(c) *Withdrawal of appeal.* An appellant, with the consent of the referee, may withdraw an appeal in writing or under oath at the hearing. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-1-6. Determination of appeal. After the hearing of an appeal, the referee shall, within a reasonable time, announce findings of fact and the decision with respect to the appeal. The decision shall be in writing and shall be signed by the referee. The referee shall set forth findings of fact with respect to the matters of appeal, the decision and the reasons therefor. (a) Notification of decision. Copies of all decisions shall be mailed by the referee to the claimant, all other interested parties to the appeal, and the examiner.

(b) All decisions shall contain appeal rights of the parties. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

Article 2.—BOARD: ORGANIZATION AND PROCEDURE

48-2-1. Creation and organization.

(a) *Election of officers.* The board of review shall

in July of each year elect one of its members chairperson, and a vice chairperson and said officers shall serve for one (1) year and until a successor is elected.

(b) *Meetings*. The board of review shall meet at least once each month or on the call of the chairperson or any two (2) members of the board, at such places as shall be designated.

(c) *Quorum*. Two (2) members of the board of review shall constitute a quorum and no action thereof shall be valid unless it shall have the concurrence of at least two (2) members. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-2-2. Filing of appeal to the board of review. A party appealing from a decision of a referee shall file with any representative of the division of employment a written notice of appeal, stating reasons for said appeal. Copies of the notice of appeal shall be mailed by the division of employment to all parties interested in the decision of the referee which is being appealed. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-2-3. Hearing of appeals. The board of review shall accept appeals, which have an appealable issue, from any referee decision that has been timely filed and its decision on the merits will be based upon the evidence and the record made before the referee, and additional evidence, if any, which the board directs to be taken. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-2-4. Additional evidence. The board of review shall, in its discretion, remand any claim or any issue involved in a claim to a referee or special hearings officer for the taking of such additional evidence as the board of review shall deem necessary. Such evidence shall be taken before the referee or special hearings officer in the manner prescribed for hearings before the referee. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended May 1, 1980.)

48-2-5. Decision of the board of review. The board of review shall within a reasonable time announce its finds of fact and decision with respect to each appeal. The decision shall be in writing and signed by those members who concur

therein. In the event the decision is not unanimous, the decision of the majority shall control. The minority opinion including any written dissent shall be made a part of the record. Copies of all decisions of the board of review shall be mailed to the parties to such appeal. (a) All decisions shall inform the parties of their appeal rights. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-2-6 and 48-2-7. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; revoked May 1, 1980.)

Article 3.—APPEALS

48-3-1. Witnesses. Witnesses subpoenaed for any hearing before a referee or special hearing officer shall be paid pursuant to K.S.A. 28-125 and K.S.A. 75-3203. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-3-2. Representation before referee and board of review. (a) Appearance in person. The parties may appear in person and by an attorney or by a duly authorized representative.

(b) Representation by attorney. A party to the proceeding may be represented by an attorney who is regularly admitted to practice before the supreme court of Kansas, or by any attorney from without the state who complies with the provisions of K.S.A. 7-104.

(c) Representation by a duly authorized representative.

(1) The parties may be represented by a duly authorized representative who shall serve without fee except as provided in K.S.A. 1985 Supp. 44-718(b). For the purpose of this article, a duly authorized representative is defined as:

(A) A union representative;

(B) an employee of an unemployment compensation cost control management firm;

(C) an employee of a corporate party; or

(D) a legal intern authorized to represent clients pursuant to the provisions of Rule 708 of K.S.A. 7-126.

(2) A referee or the board of review may limit or disallow participation in a hearing by a duly authorized representative if:

(A) the representative does not effectively aid in the presentation of the represented party's case; or

(B) the representative delays the orderly progression of the hearing.

(d) Standards of conduct. A referee or the board of review may terminate the hearing and issue a decision based upon the available evidence that a party or a party's representative intentionally and repeatedly fails to observe the provisions of the Kansas employment security law, the rules and regulations of the secretary of human resources or the instructions of a referee or the board of review. (Authorized by and implementing K.S.A. 1985 Supp. 44-709(g), as amended by L. 1986, Ch. 318, Sec. 59; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987.)

48-3-3. (Authorized by K.S.A. 1979 Supp. 44-709(f); effective Jan. 1, 1966; revoked May 1, 1980.)

48-3-4. Service of notice. Notice of all hearings or proceedings called for in this article shall, unless otherwise provided, be given by mail. (Authorized by K.S.A. 1965 Supp. 44-709(f); effective Jan. 1, 1966.)

48-3-5. Disqualification of board members. No member of the board of review shall participate in the consideration of any case in which he or she has an interest. (Authorized by

K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended May 1, 1980.)

Article 4.—FILING APPEALS

48-4-1. Notice of appeal, when filed. The notice of appeal, when filed in person, shall be considered filed on the date delivered to any employee or representative of the division of employment. A notice of appeal when filed by mail shall be considered filed on the date postmarked. If the postmark on the envelope is illegible or is missing, the appeal filed by mail shall be considered filed as of the date received by the agency less a calculated time reasonably expected to elapse enroute between the place of mailing and the place of delivery, in no case less than three (3) days. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1967; amended, E-70-32, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1980.)

48-4-2. Constructive filing. A notice of appeal not filed on time as prescribed by K.S.A. 1979 Supp. 44-709 and these regulations may be considered timely filed if the referee or the board of review finds that the party appealing failed to file a timely appeal because of excusable neglect. (Authorized by K.S.A. 1979 Supp. 44-709(g); effective, E-70-32, July 1, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980.)